

SUPPLEMENTARY GENERAL CONDITIONS

DEPARTMENT OF ADMINISTRATION

STATE OF MONTANA

The Supplementary General Conditions contain changes to the AIA General Conditions. The following supplements modify, change, delete from or add to the General Conditions of the Contract for Construction, AIA Document A201, 1997 Edition. Where any article of the General Conditions is modified or any paragraph, sub-paragraph or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that article, paragraph, sub-paragraph or clause shall remain in effect.

Article 1 General Provisions:

1.1.1 Delete the last sentence from the paragraph and add the following:

The Contract Documents shall include the bidding documents as listed in the Instructions to Bidders and any alterations made thereto by addenda. In the event of a conflict or contradiction within the Contract Documents and for the resolution of same, the following order of hierarchy shall prevail:

1) Contract; 2) Addenda; 3) Supplementary General Conditions; 4) General Conditions; 5) Specifications; 6) Drawings; 7) Instructions To Bidders; 8) Invitation To Bid; 9) Sample Forms.

1.5.1 Delete in its entirety.

Article 2 Owner:

2.1.1 Delete second and third sentences of paragraph in their entirety.

2.1.2 Delete in its entirety.

2.2.1 Delete in its entirety and replace with the following:

The Owner reserves the right to require the Contractor, all sub-contractors and material suppliers to provide lien releases at any time. The Owner reserves the right to withhold progress payments until such lien releases are received for all work for which prior progress payments have been made. Upon the Owner's demand for lien releases (either verbally or written), the Contractor, all sub-contractors and material suppliers shall provide such releases with every pay request until Final Acceptance of the Project.

2.2.3 Delete in its entirety.

2.2.4 Delete the last sentence from the paragraph.

2.4.1 Delete the fourth sentence from the paragraph.

2.5 Owner's Right To Personnel

2.5.1 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

2.5.2 Any issue or circumstance relating to or resulting out of this clause shall not be construed or interpreted to be interference with or impacting upon the Contractor's responsibilities and liabilities under the Contract Documents.

2.5.3 Person(s) and/or personnel who do not perform in accordance with the Contract Documents, shall be deemed to have provided the Owner with cause to have such persons removed from any and all involvement in the Work.

2.5.4 The Contractor agrees to indemnify and hold harmless the Owner from any and all causes of action, demands, claims, damages, awards, attorneys' fees, and other costs brought against the Owner and/or Architect/Engineer by any and all person(s) or personnel.

Article 3 Contractor:

3.1.3 Add the following after the last sentence:

Quality Control (i.e. ensuring compliance with the Contract Documents) is the responsibility of the Contractor. Testing, observations and/or inspections performed or provided by the Owner are for Quality Assurance (i.e. confirming compliance with the Contract Documents) purposes and are for the benefit of the Owner.

3.3.1 Add the following after the second sentence:

It is the responsibility of and incumbent upon the Contractor to ensure, confirm, coordinate, inspect and oversee all Work (which is inclusive of all submittals, change orders, schedules, workmanship, and appropriate staffing with enough competent and qualified personnel) so that the Work is not impacted in terms of any delays, costs, damages, or additional time, or effort on the part Architect or Owner.

Add the following to the end of the paragraph: The Contractor is required to: review any specified construction or installation procedure; advise the Architect/Engineer if the specified procedure deviates from good construction practice; to advise the Architect/Engineer if following the procedure will affect any warranties, including the Contractor's general warranty, or of any objections the Contractor may have to the procedure and to propose any alternative procedure which the Contractor will warrant.

3.4 Add the following sub-paragraphs:

3.4.4 Prevailing Wages and Montana Residents.

- .1 In any contract in excess of \$25,000 let for state work, the Contractor (including all subcontractors at any level or tier in the project) shall give preference to the employment of bona fide Montana residents in the performance of the work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. (18-2-403, Montana Code Annotated)
- .2 On any state construction project in excess of \$25,000 funded by state or federal funds, except a project partially funded with federal aid money from the United States Department of Transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the workers as defined by the Department of Labor & Industry must be bona fide Montana residents. (18-2-401, 18-2-402, Montana Code Annotated)
- .3 The Commissioner of The Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, Montana Code Annotated. A copy of the Rates, entitled "State of Montana, Prevailing Wage Rates", are bound herein. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-409, Montana Code Annotated. The Contractor (including all subcontractors at any level or tier in the project) shall direct any and all questions concerning prevailing wage and Montana resident issues for all aspects of the Work to the Montana Department of Labor and Industry.
- .4 If the contract is in excess of \$25,000, the Contractor and all subcontractors, at any tier or level in the project as determined by the Montana Department of Labor and Industry, shall classify all workers in the project in accordance with the State of Montana, Prevailing Wage Rates. In the event the Contractor is unable to classify a worker in accordance with these rates he shall contact the Department of Labor and

Industry, Employment Relations Division, P.O. Box 1728, Helena, Montana 59620, (406) 444-5600 for a determination of the prevailing wage rate to be paid.

- .5 The Contractor and all subcontractors, at any tier or level in the project, shall be responsible for obtaining wage rates for all workers in the project prior to their performing any work on the project. The Contractor is required to pay and insure that its subcontractors, fabricators and others also pay the prevailing wage determined by the DOLI, insofar as required by Title 18 of the MCA and the pertinent rules and standards of DOLI.
- .6 The Owner will not, and is not responsible to, determine who classifies as a subcontractor, sub-subcontractor, materialman, supplier, or any other person involved in any aspect of the project at any tier or level. All such determinations shall be the sole responsibility of the Contractor, subcontractors, sub-subcontractors, materialmen, suppliers and others involved in the project at any tier or level. The Contractor, subcontractors, sub-subcontractors, materialmen, suppliers and others involved in the project shall indemnify and hold harmless the Owner from all claims, attorneys' fees, damages and/or awards involving prevailing wage or Montana resident issues. Any changes to wages or penalties for failure to pay the correct wages will be the sole responsibility of the Contractor and/or his subcontractors and no further charges will be made to the Owner. If the parties mutually agree or an arbitrator or court determines that any change in wages is due and any part is attributable to the Owner, the Owner's sole liability shall be for the amount of wages ordered only and not for other expenses, charges, penalties, overhead, profit or other mark-ups.
- .7 In accordance with 18-2-422(1) MCA, each job classification's standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project is included herein by both reference to the Department of Labor & Industry's "Building" or "Heavy/Highway" schedules and as part of these Contract Documents.
- .8 The Contractor and every employer, including all subcontractors at any tier or level, is required by 18-2-422(2) MCA to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423 MCA, for a period of not less than 3 years after the contractor's or employer's completion of work on the project or the final acceptance by the Owner, whichever is later.
- .9 Each contractor is required by 18-2-422(3) MCA to post in a visible and accessible location a statement of all wages and fringe benefits in compliance with 18-2-423.

3.4.5 Products manufactured or produced in the State of Montana by Montana industry and labor shall be preferred for use in this project and in all materials, supplies and equipment procured if

such products, materials, equipment and supplies are comparable in price and quality as prescribed in 18-1-112, MCA.

- 3.4.6 The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA PRIOR to the Contract being executed by the State of Montana. A bidder must demonstrate that it has registered or promises that it will register immediately upon notice of award. If the prevailing bidder cannot or does not register in time for the Owner to execute the Contract within the fifteen (15) day time period of the notice of award the State may award to next lowest responsible bidder who meets this requirement. The Owner cannot execute a contract for construction nor issue a Notice to Proceed to a Contractor who is not registered (39-9-401(a) MCA).

- 3.5. Add the following at the end of the paragraph:

The Contractor shall and does hereby warrant and guarantee all work, workmanship and materials for the full warranty period as specified in the Contract Documents. The warranty period shall be defined as commencing with Substantial Completion (with each Substantial Completion if there is more than one) of the project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project by the Owner. The date of Final Acceptance shall be the date of the Architect's signature on the final request for payment unless otherwise agreed upon in writing by the Owner, Architect and Contractor.

- 3.6.2 In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due. Each subcontractor who performs work greater than \$5,000, shall have 1% of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the Department's prescribed form.

- 3.8.3 Delete "in sufficient time to avoid delay in the Work." from the paragraph.

- 3.9 Delete the title SUPERINTENDENT and replace with CONTRACTOR'S PERSONNEL.

- 3.9.1 Delete the paragraph in its entirety and replace with the following:

The Contractor shall employ competent personnel, supervisors, project managers, project engineers, and all others who shall be assigned to the Work throughout its duration whether at the site or not. Contractor's personnel extends to those employed by the Contractor whether at the site or not. The Owner shall have right to review and approve or reject all replacement of Contractor's personnel. All personnel assigned by the Contractor to the Work shall possess the requisite experience, skills, abilities, knowledge and integrity to perform the Work. The superintendent and others as assigned shall be in attendance at the Project site during the performance of the Work. The superintendent shall represent the Contractor. All communications given to the Contractor's personnel such as the project manager or the

superintendent, whether verbal, electronic or written, shall be as binding as if given to the Contractor. It is the Contractor's responsibility to appropriately staff, manage, supervise and direct the Work which is inclusive of the performance, acts, and actions of his personnel or subcontractors. As such, the Contractor further agrees to indemnify and hold harmless the Owner and the Architect, and to protect and defend both from and against all claims, attorneys' fees, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of or against the Owner, Architect, Contractor, their agents, employees, or any third parties on account of the performance, behavior, acts or actions of the Contractor's personnel or subcontractors.

- 3.9.2 The Contractor shall submit a listing of all key personnel prior to the commencement of any and all work. Key personnel shall include, but is not limited to, the superintendent, project manager(s), schedulers, supervisors, and necessary assistants regardless of job title or description.
- 3.10.4 The Contractor shall prepare Critical Path Method construction Project Schedules in a form that is acceptable to both the Architect/Engineer and the Owner. The Schedule shall show the estimated progress of the entire project through the individual time periods allowed for completion of each discipline/phase including, but not limited to, time for submittals, earthwork, foundations, structural, mechanical, electrical, insulation, interior finishes, etc. For Projects with construction costs of \$1,000,000 and greater, the Project Schedule shall be in the Critical Path Method (CPM). The Project Schedule shall show the percent complete, progress to date, project work and projected time to complete the work for all activities. The percent complete and minor schedule changes, including additions of activities, changes to sequences of activities and significant changes in activity demands must be shown by a revised Schedule. A written report providing details about the changes and what actions are anticipated to get the work completed in the contractual time period shall be submitted with the revised schedule.
- 3.12.5 Delete the following from the paragraph found in the first sentence: "with reasonable promptness and in such sequence." Add the following in its place" "within sixty (60) calendar days of being issued the Notice to Proceed." Delete the last sentence from the paragraph and replace with the following: "Any and all items submitted by the Contractor which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor, or in the opinion of the Architect, have not been reviewed for compliance by the Contractor even if marked as such, may be returned by the Architect without action and shall not result in any accusation or claim for delay or cost by the Contractor. Any submittal that, in the opinion of the Architect, is incomplete in any area or detail may be rejected and returned to the Contractor. It is the responsibility of and incumbent upon the Contractor to ensure and confirm that all submittals are complete, accurate, and in conformance to the Contract Documents prior to submission."
- 3.12.7 Add the following to the end of the paragraph: "Should the Contractor, Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of

any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.”

- 3.12.11 The Contractor shall submit to the Architect within sixty (60) days from the date of the Notice to Proceed, unless otherwise specified, a minimum of six (6) complete copies of all shop/setting drawings, schedules, cut sheets, products, product data, and samples required for the complete Work. Copies shall be reviewed, marked, stamped and approved on each and every copy by the Contractor prior to submission to the Architect or they shall be returned without review or action. The Architect shall review with reasonable promptness, making corrections, rejections, or other actions as appropriate. The Architect’s approval or actions on shop/setting drawings, schedules, cut sheets, products, product data, or samples shall not relieve the Contractor from responsibility for, nor deviating from, the requirements of the plans and specifications. Any deviations from the plans and specifications requested or made by the Contractor shall be brought promptly to the attention of the Architect.
- 3.18.1 Delete from the first sentence: “and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3,”

Article 4 Administration of the Contract:

- 4.1.1 Delete the last sentence from the paragraph and add the following: “The term Architect means the Architect or the Engineer or either’s authorized representative.”
- 4.1.2 Place a period after Owner and delete the following from the paragraph: “Contractor and Architect. Consent shall not be unreasonably withheld.”
- 4.1.3 Delete the following portion of the paragraph: “Architect against whom the Contractor has no reasonable objection.”
- 4.2.1 Delete the following from the first sentence: “(1) during construction, (2) until final payment, (3) with the Owner’s concurrence, from time to time during the one-year period for correction of the Work described in Paragraph 12.2.” Replace with the following: “throughout the complete duration of the warranty period.”
- 4.2.2 Delete the second and third sentences from the paragraph.
- 4.3.1: Add the following as sub-paragraphs:
- .1 All Claims shall contain sufficient justification and substantiation with the written notice or they may be rejected without consideration by the Architect or other party with no additional impact or consequence to the Contract Sum, Contract Time, or matter(s) in

question in the Claim.

- .2 If additional compensation is claimed, the exact amount claimed and a breakdown of that amount into the following categories shall be provided with each and every claim:
 - a. Direct costs (as listed in Subparagraph 7.3.6.1 through 7.3.6.5);
 - b. Indirect costs (as defined in Paragraph 7.2.5);
 - c. Consequential items (e.g. time extensions, credits, logic, reasonableness, impacts, disruptions, dilution) for the change;
 - d. Subcontractors' claims (the same level of detail as specified herein shall also apply to any and all subcontractors' claims).
- .3 If additional time is claimed the following shall be provided with each and every claim:
 - a. The specific number of days and specific dates for which the additional time is sought;
 - b. The specific reasons, causes, and/or effects whereby the Contractor believes that additional time should be granted;
 - c. The Contractor shall provide an analysis, documentation and justification of its claim for additional time in accordance with the latest Critical Path Method schedule in use at the time of event giving rise to the claim.
- .4 With any and all claims, the Contractor shall submit to the Architect and Owner a notarized statement containing the following language:

"Under penalty of law (including perjury or false/fraudulent claims), the undersigned,

_____	_____
(name)	(title)

of _____	_____
(company)	(date)

hereby certifies, warrants and guarantees that this claim made for work on this contract is a true statement of the costs, adjustments and/or time sought and is fully documented and supported under the contract between the parties.

_____	_____
(signature)	(date)"

- 4.3.2 Delete the following portion of the paragraph: "or within 21 days after the claimant first recognizes the condition giving rise to the claim, whichever is later." Add the following to the end of the paragraph: "If the Contractor wishes to reserve its rights under this paragraph, written

notice concerning any event that may give rise to a claim must be given within 21 days of the event, whether or not any impact in money or time has been determined. The written notice must be a separate and distinct correspondence provided in hardcopy to both the Architect and Owner and must delineate the specific event and outline the causes and reasons for a claim or potential claim. Written remarks or notes of a generic nature are invalid. Comments made at progress meetings, walk-throughs, inspections, in e-mails, voice mails, and other such communications do not meet the requirement of providing notice of a claim or potential claim.”

4.3.3 Add the following to the end of the last sentence: “on the portion of the Work not involved in a Claim.”

4.3.7.2 Add the following:

- .1 Inclement or adverse weather shall not be a prima facie reason for the granting of an extension of time, and the Contractor shall make every effort to continue work under prevailing conditions. The Owner may grant an extension of time if an unavoidable delay occurs as a result of inclement/severe/adverse weather and such shall then be classified as a “Delay Day”. Any and all delay days granted by the Owner are and shall be non-compensable in any manner or form. The Contractor shall comply with the notice requirements concerning instances of inclement/severe/adverse weather before the Owner will consider a time extension. Each day of inclement/severe/adverse weather shall be considered a separate instance or event and as such, shall be subject to the notice requirement of Subparagraph 4.3.2.
- .2 An “inclement”, “severe”, or “adverse” weather delay day is defined as a day on which the Contractor is prevented by weather or conditions caused by weather resulting immediately therefrom, which directly impact the current controlling critical-path operation or operations, and which prevent the Contractor from proceeding with at least 75% of the normal labor and equipment force engaged on such critical path operation or operations for at least 60% of the total daily time being currently spent on the controlling operation or operations.
- .3 The Contractor shall consider normal/typical/seasonal weather days and conditions caused by normal/typical/seasonal weather days for the location of the Work in the planning and scheduling of the Work to ensure completion within the Contract Time. No time extensions will be granted for the Contractor’s failure to consider and account for such weather days and conditions caused by such weather for the Contract Time in which the Work is to be accomplished.
- .4 A “normal”, “typical”, or “seasonal” weather day shall be defined as weather that can be reasonably anticipated to occur at the location of the Work for each particular month involved in the Contract Time. Each month involved shall not be considered individually as

it relates to claims for additional time due to inclement/adverse/severe weather but shall consider the entire Contract Time as it compares to normal/typical/seasonal weather that is reasonably anticipated to occur. Normal/typical/seasonal weather days shall be based upon U.S. National Weather Service climatic data for the location of the Work or the nearest location where such data is available.

- .5 The Contractor is solely responsible to document, prepare and present all data and justification for claiming a weather delay day. Any and all claims for weather delay days shall be tied directly to the current critical-path operation or operations on the day of the instance or event which shall be delineated and described on the Critical-Path Schedule and shall be provided with any and all claims. The Contractor is solely responsible to indicate and document why the weather delay day(s) claimed are beyond those weather days which are reasonably anticipated to occur for the Contract Time. Incomplete or inaccurate claims, as determined by the Architect or Owner, may be returned without consideration or comment.

4.3.10 Delete the word “direct” from the last sentence.

4.4.3 Delete in its entirety.

4.5.2 After the words "American Arbitration Association currently in effect", add the following: “and/or those rules specified in the contract documents or separately agreed upon between the parties. Construction Industry Mediation Rule M-2 (filing with AAA) is void. The parties shall mutually agree upon a mediator who shall then take the place of AAA in the Construction Industry Mediation Rules. The parties must mutually agree to use AAA and no filing of a request for mediation shall be made to AAA by either party until such mutual agreement has been made.” Delete the following from the second sentence of paragraph: “and with the American Arbitration Association.”

4.6.2 After the words "American Arbitration Association currently in effect", add the following: “and/or those rules specified in the contract documents or separately agreed upon between the parties. Construction Industry Arbitration Rule R-3 (filing with AAA) is void. The parties shall mutually agree upon an arbitrator or arbitrators who shall then take the place of AAA in the Construction Industry Arbitration Rules. The parties must mutually agree to use AAA and no filing of a demand for arbitration shall be made to AAA by either party until such mutual agreement has been made.” Delete the following from the last sentence of paragraph: “with the American Arbitration Association”.

4.6.3 Delete the following from the paragraph: “and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.”

4.6.4 Delete in its entirety.

4.6.6 Add the following sentence to the end of the paragraph: “The parties agree that the costs of the arbitrator(s) compensation and expenses shall be borne equally. The parties further agree that the arbitrator(s) shall have the authority to award to either party some or all of the other costs and expenses involved (including attorneys’ fees).”

Article 5 Subcontractors:

5.2.1 Delete the following from the first sentence: “as soon as practicable after award of the Contract,” and replace with: “upon submission of the first request for payment,”

5.3 Add the following sub-paragraph:

5.3.2 In compliance with state statutes, the Contractor will have 1% withheld from all payments as a gross receipts tax. Each "Public Contractor" which includes all Subcontractors at any tier or level with contracts greater than \$5,000 each shall the have 1% gross receipts tax withheld by the Contractor from all payments to Subcontractors and made payable to the Department of Revenue.

Article 7 Changes in Work:

7.2 Add the following:

7.2.1.3 Add the following after the last sentence:

Any and all changes or adjustments to the Contract Time requested or claimed by the Contractor as a result of a Change Order shall require documentation and justification for the adjustment by a Critical Path Method analysis of the Contractor’s most recent Critical Path Schedule in use prior to the change. Changes which affect or concern activities containing float or slack time (i.e. not on the critical path) and which can be accomplished within such float or slack time, shall not result in an increase in the Contract Time.

7.2.2 Delete the paragraph in its entirety and replace with the following:

7.2.2 The cost or credit to the Owner resulting from a change in the Work shall be determined as follows:

.1 By one of the methods in Subparagraph 7.3.3, or as determined by the Architect per Subparagraph 7.3.6, plus a 5% allowance for overhead and a 10% allowance for profit. The

allowances for overhead and for profit are limited to the percentages as specified herein unless they are determined to be unreasonable by the Architect (not the Contractor) per Subparagraph 7.3.6 for each Change Order.

- .2 The Contractor's proposed increase or decrease in cost shall be limited to costs listed in Subparagraph 7.3.6.1 through 7.3.6.5.
- 7.2.3 The Contractor shall not submit any Change Order, response to requested cost proposals, or requested changes which are incomplete and do not contain full breakdown and supporting documentation in the following three areas:
- .1 Direct costs (only those listed in Subparagraph 7.3.6.1 through 7.3.6.5 are allowable).
 - .2 Indirect costs (limited as a percentage on each Change Order per Supplementary General Conditions, Paragraph 7.2.2)
 - .3 Consequential items (e.g. time extensions, credits, logic, reasonableness, impacts, disruptions, dilution)
- 7.2.4 Any Change Order, responses to requested proposals, or requested changes submitted by the Contractor which, in the opinion of the Architect, are incomplete, may be rejected and returned to the Contractor without comment. It is the responsibility of and incumbent upon the Contractor to ensure and confirm that all Change Orders, responses to requested proposals, or requested changes are complete prior to submission.
- 7.2.5 Overhead, applicable to all areas and sections of the Contract Documents, means "Indirect Costs" as referenced in Subparagraph 7.2.3.2. Indirect costs are inclusive of, but not limited to, the following: home office overhead; off-site supervision; change order and/or proposal preparation, design, research, negotiation and associated travel; effects of disruption and dilution of management and supervision whether on or off-site; time delays; coordination of trades; postage and shipping; and, effective increase in guarantee and warranty durations. Indirect costs applicable to any and all changes in the work, either through Change Order or Construction Change Directive, are limited to the percentage allowance for overhead in Subparagraph 7.2.2.1.
- 7.2.6 By signature on any change order, the Contractor certifies that the signed change order is complete and includes all direct costs, indirect costs and consequential items (including additional time, if any) and is free and clear of all claims or disputes (including, but not limited to, claims for additional costs, additional time, disruptions, and impacts) in favor of the contractor, subcontractors, material suppliers, or other persons or entities concerning the signed change order and on all previously contracted Work and does release the Owner from such.

7.3 Add the following:

7.3.1 Add the following after the last sentence:

Any and all changes or adjustments to the Contract Time requested or claimed by the Contractor as a result of a Construction Change Directive, shall require documentation and justification for the adjustment by a Critical Path Method analysis of the Contractor's most recent Critical Path Schedule in use prior to the change. Changes that affect or concern activities containing float or slack time (i.e. not on the critical path) and which can be accomplished within such float or slack time, shall not result in an increase in the Contract Time.

7.3.6 Delete the first sentence and replace with the following:

If the Contractor does not respond or disagrees with the method for adjustment in the Contract Sum in writing within seven (7) calendar days, the method and the adjustment made shall be determined by the Architect on the basis of reasonable expenditures and/or savings of those performing the Work directly attributable to the change including, in the case of an increase in the Contract Sum, an allowance for overhead and profit as listed under Subparagraph 7.2.2.

7.3.6.1 Delete the paragraph in its entirety and replace with the following:

.1 costs of labor, as determined by the Prevailing Wage Rates bound herein;

7.3.10 Supervision means on-site, field supervision and not home office overhead, off-site management or off-site supervision.

7.3.11 Labor means those persons engaged in construction occupations as defined in Montana Prevailing Wage Rates for Building Construction or Heavy/Highway as bound in the Contract Documents and does not include design, engineering, superintendence, management, on-site field supervision, home office or other off-site management, off-site supervision, office or clerical work.

Article 8 Time:

8.1.2 Add the following:

Delete the word "Agreement" and add "Notice to Proceed."

8.1 Add the following sub-paragraphs:

8.1.5 Liquidated damages:

The Owner may suffer loss if the project is not substantially complete on the date set forth in the contract documents. The Contractor and his surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the work is substantially complete:

[DOLLARS PER DAY] AND NO/100 DOLLARS (\$[].00)***

8.1.6 Provided that the Contractor shall not be charged liquidated damages of any excess cost when delay in completion of the work is due to:

- .1 Any preference, priority or allocation order issued by the government.
- .2 Unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.
- .3 Any delays of Sub-Contractors or suppliers occasioned by any of the causes specified in .1 and .2 of this article.

8.1.7 Provided further that the Contractor shall within ten days from the beginning of such delay, notify the Owner in writing of the causes of the delay.

8.1.8 All work shall be "substantially complete" within:

[DURATION] (#) consecutive calendar days after the start date on a written "Notice to Proceed" from the Owner.

8.2.2 Delete "and Owner" from the end of the first sentence.

Article 9 Payments and Completion:

9.3.1.2 Delete in its entirety.

Add the following:

9.3.4 Until the work is complete, the Owner will pay 95% of the amount due the Contractor on account of progress payments.

- .1 If the Work and its progress are not in accordance with all or any part, piece, or portion of the Contract Documents, the Owner may, at its sole discretion, increase the amount held as retainage to whatever level deemed necessary to effectuate performance and progress of the Work, for anticipated repairs, warranties or completion of the Work by the Contractor or

through the letting of other contracts. The Contractor will not be entitled to additional costs, expenses, fees, time, and such like, in the event the Owner increases the amount held as retainage due to non-compliance and/or non-performance with all or any part, piece, or portion of the Contract Documents.

.2 Prior to the first application for payment, the Contractor shall submit the following information on the appropriate forms:

- a. Schedule of Amounts for Contract Payment (Form 100): This form shall contain a breakdown of the labor, material and other costs associated with the various portions of the work and shall be the basis for the progress payments to the Contractor.
- b. Project/Progress Schedule: *If no Schedule (or revised Schedule) is provided with each and every Periodic Estimates for Partial Payment, the Architect/Engineer and/or Owner may return the pay request, or hold it, and may choose not pay for any portion of the Work until the appropriate Schedule, indicating all changes, revisions and updates, is provided. No claim for additional costs or interests will be made by the Contractor or any subcontractor on account of holding or non-payment of the Periodic Estimate for Partial Payment request.*

.3 Progress Payments

- a. Periodic Estimates for Partial Payment shall be on a form provided by the Owner (Form 101) and submitted to the Architect/Engineer for payment by the Owner. Payment shall be requested for the labor and material incorporated in the work to date and for materials suitably stored, less the aggregate of previous payments, the retainage, and the 1% gross receipts tax.
- b. The Contractor, by submission of any partial pay request, certifies that every request for partial payment is correct, true and just in all respects and that payment or credit had not previously been received. The Contractor further warrants and certifies, by submission of any partial pay request, that all previous work for which payment has been received is free and clear of all liens, disputes, claims, security interests, encumbrances, or causes of action of any type or kind in favor of the Contractor, subcontractors, material suppliers or other persons or entities and does release the Owner from such.
- c. Progress payments do not constitute official acceptance of any portion of the work or materials whether stored on or off-site.
- d. In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due. Each subcontractor who

performs work greater than \$5,000, shall have 1% of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.

- .4 The Contractor may submit obligations/securities in a form specified in 18-1-301 Montana Code Annotated (MCA) to be held by a Financial Institution in lieu of retainage by the Owner. The Owner will establish the amount that would otherwise be held as retainage. Should the Contractor choose to submit obligations/securities in lieu of retainage, the Owner will require the Financial Institution to execute the Owner's ACCOUNT AGREEMENT FOR DEPOSIT OF OBLIGATIONS OTHER THAN RETAINAGE (Form 120) prior to submission of any obligations/securities in accordance with 18-1-302 MCA. The Contractor must extend the opportunity to participate in all obligations/securities in lieu of retainage on a pro rata basis to all subcontractors involved in the project and shall be solely responsible for the management and administration of same. The Owner assumes no liability or responsibility from or to the Contractor or Subcontractors regarding the latter's participation.

- 9.5.1 In the first sentence after "withhold" add "or reject"

- 9.7.1 Delete the paragraph in its entirety and replace with the following:

If the Architect does not certify a satisfactory Periodic Estimate for Partial Payment within a reasonable time upon receipt or if the Owner does not pay the Contractor within a reasonable time upon receipt of the Architect's certification, through no fault of the Contractor, then the Contractor may, upon giving fourteen (14) days written notice by registered mail to the Owner and the Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended by the amount of time between issuing the written notice and receipt of payment. The Contract Sum may be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up if substantiated in accordance with Paragraph 4.3.

- 9.8.3 Add the following to the end of the paragraph after the last sentence: The Contractor shall ensure the project is substantially complete prior to requesting any inspection by the Architect so that no more than one (1) inspection is necessary to determine Substantial Completion. If the Contractor does not perform adequate inspections to develop a comprehensive list as required in Paragraph 9.8.2 and does not complete or correct such items upon discovery or notification, the Contractor shall be responsible and pay for the costs of the Architect's additional inspections to determine Substantial Completion.

- 9.8.4 Delete the paragraph in its entirety and replace with the following:

When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial

Completion and which shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. After issuance of the Certificate of Substantial Completion, the Contractor shall finish and complete all remaining items within thirty (30) calendar days of the date on the Certificate. The Architect shall identify and fix the time for completion of specific items which may be excluded from the thirty (30) calendar day time limit. Failure to complete any items within the specified time frames may be deemed by the Owner as default of the contract on the part of the Contractor.

9.10.2 Add the following:

Final payment shall not be due until the Contractor has furnished an Affidavit on Behalf of Contractor executed on Owner's Form 106. The date of Final Payment by the Owner shall constitute Final Acceptance of the Work and will be the determining date for the expiration of the warranty period as specified in Paragraph 12.2.2.4.

Article 10 Protection of Persons and Property:

- 10.3.3 Delete the following from the last sentence of the paragraph: "and provided that such damage, loss or expense is not due to the sole negligence of the party seeking indemnity." Replace with: "and provided that such damage, loss or expense is not due in whole or in part to the negligence of the party seeking indemnity. Each party shall bear their costs, damage, loss and/or expenses for its own negligence."
- 10.4 Add the following to the end of the paragraph: The Contractor shall be held responsible for remediation, costs, damages, loss and/or expenses related to its own negligence, whether in total or in part, for such materials and substances brought to the site.
- 10.5 Add the following to the end of the paragraph: The Owner shall not, nor be required to, indemnify nor hold harmless the Contractor for costs, damages or any other expenses caused in whole or in part by the Contractor's negligence.

Article 11 Insurance and Bonds:

Delete Article 11 in its entirety and replace with the following:

- 11.1 Insurance, General: the Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the Work by the Contractor, its agents, employees, representatives, assigns, or subcontractors. The Contractor is responsible for all deductibles regardless of policy or level of coverage. The Owner reserves the right to demand, and the Contractor agrees to provide, copies of any and all policies at any time.

- 11.2 **Hold Harmless and Indemnification:** the Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and the Owner against and from all claims, liabilities, demands, causes of action, judgements (including costs and reasonable attorneys' fees), and losses from any cause whatever (including patent, trademark and copyright infringement). This includes any suits, claims, actions, losses, costs, damages of any kind, including the State and Owner's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, actions, losses, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of the State or Owner if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of the Contractor in whole or in part.
- 11.3 **Contractor's Insurance:** **insurance required under all sections herein shall be in effect for the duration of the contract that extends through the warranty period.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence any Work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- 11.3.1 **Certificates of Insurance and Endorsements.** All certificates of insurance and the additional insured **endorsements** are to be received by the state prior to issuance of the Notice To Proceed. The contractor is responsible to ensure that all policies and coverages contain the necessary endorsements for the State being listed as an additional insured. The state reserves the right to require complete copies of all insurance policies at any time to verify coverage. The contractor shall notify the state within 30 days of any material change in coverage.
- 11.3.2 The Contractor shall carry **Workers' Compensation Insurance.** Such Workers' Compensation Insurance shall protect the Contractor from claims made by his own employees, the employees of any Sub-contractor, and also claims made by anyone directly or indirectly employed by the Contractor or Sub-contractor. The Contractor shall require each Sub-contractor similarly to provide Workers' Compensation Insurance.

11.3.3

- .1 Each Contractor shall carry per occurrence coverage **Commercial General Liability Insurance** including coverage for premises; operations; independent contractor's protective; products and completed operations; products and materials stored off-site; broad form property damage and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General and Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death, sickness, disease, occupational sickness or disease, personal injury liability coverage and property damage which may arise out of the work under this contract, or operations incidental thereto, whether such work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or by Sub-contractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain the liability insurance required herein for a period of not less than one year after final payment or anytime the Contractor goes on to the location of the project.

- .2 The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers and political subdivisions thereof. Should the Contractor not be able to list the state as an additional insured, the Contractor shall purchase a per occurrence Owner's/Contractor's Protective Policy (OCP) with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as that indicated above for the Contractor's Commercial General Liability Policy.
- .3 Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.
- .4 The Contractor's insurance coverage shall be PRIMARY insurance as respects the State, its officers, elected and appointed officials, employees and volunteers. Any insurance or self-insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it. No waivers of subrogation or endorsements limiting, transferring, or otherwise indemnifying liable or responsible parties of the Contractor or any subcontractor will be accepted.

- 11.3.4 **Property Insurance (All Risk):** the Contractor shall purchase and maintain Builder's Risk/Installation insurance on a special causes of loss form ("all risk") upon the entire work, including vandalism and malicious mischief and theft of material stored off-site, on-site or in

transit, currently authorized at the site to the full insurable value thereof. Such insurance shall be in a company or companies authorized to do business in the state of Montana. This insurance shall include the interests of the Owner, the Contractor, Sub-contractors and sub-subcontractors in the work and shall include "All Risk" Insurance for physical loss or damage including, without duplication of coverage, fire, leakage, steam boilers, pressure vessels, oil or gasoline tanks, theft, vandalism and malicious mischief, and other such risks. If not covered under all risk insurance or otherwise provided in the contract documents, the Contractor shall effect and maintain similar property insurance on portions of the work, products or materials stored off the site or in transit when such portions of the work are to be included in an application for payment. Additionally, all certificates shall include the project name and A/E project number.

- .1 The form of policy for this coverage shall be "completed value of the work" for all new structures and "cost of the work for all renovations" of existing structures.
- .2 If by the terms of this insurance any mandatory deductibles are required, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim.

11.3.5 If Asbestos Abatement is identified as part of the Work under this contract, the following shall apply:

Asbestos Liability Insurance: the Contractor or any subcontractor involved in asbestos abatement shall purchase and maintain Asbestos Liability Insurance for coverage of bodily injury, sickness, disease, death, damages, claims, errors or omissions regarding the asbestos portion of the work *in addition to* the CGL Insurance by reason of any negligence in part or in whole, error or omission committed or alleged to have been committed by the Contractor or anyone for whom the Contractor is legally liable. Such insurance shall be in "per occurrence" form and shall clearly state on the certificate that asbestos work is included in the following limits: \$1,000,000 per occurrence; \$2,000,000 aggregate. Asbestos Liability Insurance as carried by the asbestos abatement subcontractor in these limits in lieu of the Contractor's coverage is acceptable provided the Contractor and the State of Montana are named as additional insureds and that the abatement subcontractor's insurance is PRIMARY as respects both the Owner and the Contractor. If the Contractor or any other subcontractor encounters asbestos, all operations shall be suspended until abatement with the associated air monitoring clearances are accomplished. The certificate of coverage shall be provided to the Owner.

11.4 **Performance Bond and Labor & Material Payment Bond (Both are required).**

The Contract shall furnish a Performance Bond in the amount of 100% of the contract price as security for the faithful performance of his contract (18-2-201 MCA). The Contractor shall also furnish a Labor and Material Payment Bond in the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith (18-2-201MCA). The bonds shall be executed on forms furnished by the Owner and

no other forms or endorsements will be acceptable. The bonds shall be signed in compliance with state statutes (33-17-1111 MCA). Bonds shall be secured from a state licensed bonding company. Power of Attorney is required with each bond. Attorneys-in-fact who sign contract bonds must file with each bond a certified and effectively dated copy of their power of attorney:

1. One original copy shall be furnished with each set of bonds.
2. Others furnished with a set of bonds may be copies of that original.

The Contractor may, in lieu of a surety bond or bonds, provide the following securities in an amount equal to the contract price for each bond type required:

1. Lawful money of the United States;
2. A cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the State of Montana or by a national banking association located in Montana;
3. Or, certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

The Owner shall retain such security for a time period of four (4) months after completion and acceptance of the Project by the Owner and shall retain 25% of such security for eight (8) months thereafter.

Article 12 Uncovering and Correction of Work:

12.2 Correction of work

12.2.2.1 Delete from the first sentence "Substantial Completion" and replace with "Final Acceptance". Add the following at the end of the paragraph:

- .1 The Contractor shall remedy any and all deficiencies due to faulty materials or workmanship and pay for any damage to other work resulting therefrom, which shall appear within the period of Substantial Completion through one (1) year from the date of Final Acceptance in accordance with the terms and conditions of the Contract and with any special guarantees or warranties provided in the Contract Documents. The Owner shall give notice of observed deficiencies with reasonable promptness. All questions, claims or disputes arising under this Article shall be decided by the Architect/Engineer. All manufacturer, product and supplier warranties are in addition to this Contractor warranty.
- .2 The Contractor shall respond within seven (7) days after notice of observed deficiencies has been given and he shall proceed to immediately remedy these deficiencies.
- .3 Should the Contractor fail to respond to the notice or not remedy those deficiencies, the Owner

shall have this work corrected at the expense of the Contractor.

- .4 Latent defects shall be in addition to those identified above and shall be the responsibility of the Contractor per the statute of limitations for a written contract (27-2-208 MCA) starting from the date of Final Acceptance.

Article 13 Successors and Assigns:

- 13.2.1 Delete from the second sentence: "Except as provided in Subparagraph 13.2.2," Delete from the last sentence of the paragraph: "If either party attempts to make such assignment", and replace with: "If either party attempts or makes such assignment".

- 13.2.2 Delete in its entirety.

- 13.8 Add the following paragraph:

Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Accounting records shall be kept by the Contractor for a period of three years after Final Acceptance of the Project by the Owner.

Article 14 Termination or Suspension of the Contract:

- 14.1 Termination by the Contractor.

- 14.1.1.3 Delete in its entirety.

- 14.1.1.4 Delete in its entirety.

- 14.4.3 Add the following to the end of the paragraph: "The Contractor shall provide an itemized accounting of all costs."

Add the following Article:

Article 15 Equal Opportunity:

- 15.1 The Contractor shall maintain policies of employment as follows:

The Contractor and all Sub-contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age and shall comply with all Federal and State laws concerning fair labor standards and hiring practices. The Contractor

shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

- 15.1.2 The Contractor and all Sub-contractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.